

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 05/02/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
689 EATERY CORP., etc. *et ano.*,
Plaintiffs,
:
-v-
:
CITY OF NEW YORK, *et al.*,
Defendants.
:
-----X
-----X

02-cv-4431 (LJL)

ORDER

-----X
:
59 MURRAY ENTERPRISES, INC. etc., *et ano.*,
Plaintiffs,
:
-v-
:
CITY OF NEW YORK, *et al.*,
Defendants.
:
-----X
-----X

02-cv-4432 (LJL)

ORDER

-----X
:
CLUB AT 60TH STREET, *et al.*,
Plaintiffs,
:
-v-
:
CITY OF NEW YORK,
Defendant.
:
-----X
-----X

02-cv-8333 (LJL)

ORDER

-----X
:
336 LLC, etc, *et al.*,
Plaintiffs,
:
-v-
:
CITY OF NEW YORK,
Defendant.
:
-----X

18-cv-3732 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Before the Court are the parties' joint letter motion for an extension of time to file responsive briefing in their cross-motions for summary judgment and to file a third supplemental

statement of facts. Dkt. No. 202.¹ The parties also indicate that they are prepared to consolidate the joint statements of facts into a single joint statement of facts (the “Consolidated Statement of Stipulated Facts”) and to refile their summary judgment papers with citations to the new statement of facts by May 26, 2023. *Id.* at 2. On September 16, 2022, after several requests for extensions of time were granted by the Court, Plaintiffs filed joint motions for partial summary judgment, Dkt. No. 169, and Defendants filed joint motions for summary judgment, Dkt. No. 173. On March 27, 2023, Plaintiffs filed cross-motions for summary judgment. Dkt. No. 198. The motions for summary judgment are DENIED WITHOUT PREJUDICE TO RENEWAL on the schedule proposed by the parties, which shall serve as the schedule for renewed motions for summary judgment. For the sake of clarity, the parties are directed to adhere to the dates set forth below:

- May 19, 2023: Filing of Consolidated Statement of Stipulated Facts.
- May 26, 2023: Re-filing of motions and cross-motions for summary judgment and previously filed memoranda of law.
- June 9, 2023: Plaintiffs’ reply on their motions for partial summary judgment, Defendants’ reply on their motions for summary judgment, and Defendants’ opposition to Plaintiffs’ cross-motions for summary judgment.
- July 9, 2023: Plaintiffs’ reply on their cross-motions for summary judgment.

In addition, a bench trial of this case is scheduled to commence on October 16, 2023. The trial will proceed with direct testimony of any party witnesses and experts to be called by a party by declaration and based on the parties’ Consolidated Statement of Stipulated Facts. The declarations shall be submitted with the Consolidated Statement of Stipulated Facts on May 19, 2023. Cross-examination and redirect examination on the declarations shall proceed at trial. In addition, the parties shall submit a joint pretrial order on October 2, 2023, consistent with the Court’s Individual Practices. Among other things, the joint pretrial order will list the witnesses (including non-party witnesses who will testify live) and the exhibits to be presented at trial. A final pretrial conference will be held in Courtroom 15C on October 13, 2023, at 11:00 a.m.

This case has been pending since June 12, 2002, when the complaints in Case Numbers 02 Civ. 4431 and 02 Civ. 4432 were filed. Case Number 02 Civ. 8333 was initiated on October 7, 2002. All three cases were consolidated as related. Although, by Order dated September 26, 2023, Judge Pauley administratively closed these cases while parallel New York State court litigation proceeded, *see* Dkt. No. 43, the cases were reopened over five years ago, on April 23, 2018. Dkt. No. 51. Case Number 18 Civ. 3732 was initiated by a complaint that was accepted for filing on April 30, 2018, and accepted as related on May 4, 2018. On September 30, 2019, Judge Pauley entered a preliminary injunction in this case, which remains in effect. Dkt. No. 120. Prior to that, Defendant City of New York agreed not to enforce the challenged ordinance while state and federal litigation was pending and thus the challenged ordinance has gone unenforced since 2002. *See* Dkt. No. 63 at 4–5, 8. The parties have made numerous requests for extensions on the motions for summary judgment, albeit to facilitate review by the Court. Those requests culminated most recently with the instant request to file a new supplemental statement

¹ Unless otherwise noted, docket references refer to the lead case in these matters, Docket 02 Civ. 4431.

of facts, demonstrating that the instant motions for summary judgment were not ripe when filed and that renewed motions are necessary.

The time has come for this case to come to a conclusion and for the Court to finally determine whether Defendant City of New York can enforce an ordinance that it passed over twenty years ago. The Court intends for the presentation of all evidence to be concluded within this calendar year so that the Court can render a decision either in 2023 or shortly thereafter.

The Clerk of Court is respectfully directed to close Dkt. Nos. 169, 173, 198, 202 in Case Number 02 Civ. 4431; Dkt. Nos. 132, 136, 142, 156, 160 in Case Number 02 Civ. 04432; Dkt. Nos. 154, 158, 176, 177, 182 in Case Number 02 Civ. 8333; and Dkt. Nos. 128, 134, 144, 152, 155 in Case Number 18 Civ. 3732.

SO ORDERED.

Dated: May 2, 2023
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', is written over a horizontal line.

LEWIS J. LIMAN
United States District Judge